

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Case No. 6:99-cr-60092-AA

Plaintiff,

OPINION AND ORDER

v.

ISAAC JAMES MCCULLOUGH,

Defendant.

AIKEN, Chief Judge:

Defendant, appearing *pro se*, filed a "Claim of Actual Innocence and Certified Question of Law." The court construes defendant's filing as a motion to vacate, set aside or correct his sentence under 28 U.S.C. § 2255, given that he challenges the legality of his conviction and sentence and seeks to "be declared actually innocent and be ordered released." Def.'s Motion at 21. So construed, the motion is denied.

On November 23, 1999, defendant pled guilty pursuant to a plea agreement to being a felon in possession of a firearm which had been shipped or transported in interstate commerce. As part of his plea agreement, defendant agreed to waive his rights to appeal and to file a 28 U.S.C. § 2255 petition.

On February 22, 2000, the court sentenced defendant to the mandatory minimum sentence of 180 months imprisonment pursuant to the Armed Career Criminal Act (ACCA). 18 U.S.C. § 924(e). Defendant was subject to the mandatory minimum sentence due to (at least) three prior convictions that constituted violate felonies within the meaning of the ACCA. Id.

On December 14, 2012, defendant filed the instant motion. Defendant seeks to vacate his sentence under § 2255, arguing that the court lacked subject matter jurisdiction over his offense of conviction. However, defendant's claim is barred not only by his plea agreement, but by the relevant statute of limitations. See 28 U.S.C. § 2255(f) ("A 1-year period of limitation shall apply to a motion under this section."). Defendant sets forth no basis why the statute of limitations should not apply.

Moreover, given the fact that defendant's claim has been rejected repeatedly, I find no basis to apply equitable tolling or otherwise permit review of his untimely motion. See United States v. Hanna, 55 F.3d 1456, 1462 n. 2 (1995).


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CONCLUSION

Defendant's Motion (doc. 21) is DENIED.

IT IS SO ORDERED.

Dated this 19 day of March, 2013.



Ann Aiken
United States District Judge